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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,004	12/12/2003	David J. Upton	Upton-1	2340
7590	07/21/2005		EXAMINER SUTTON, ANDREW W	
C. James Bushman Browning Bushman P.C. Suite 1800 5718 Westheimer Houston, TX 77057-5771			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,004

Applicant(s)

UPTON ET AL.

Examiner

Andrew W. Sutton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 and 2 are rejected under 35 U.S.C. 102(a) as being anticipated by Park (US 20030196248).

As to claims 1 and 2, Park illustrates in Fig. 1 headgear with a headband portion and a bill portion connected to the headband portion. The bill portion including a topside, a bottom side, and an edge. Park illustrates in Fig. 6A a cross section of the composite makeup of the bill including a core section 630, with a transparent cover 610 on top. Plastic inherently is capable of having a glossy surface.

As to claim 3, Park illustrates a decorative layer 620 between top surface 610 and core 630.

As to claim 7, Park discloses (Paragraph 9) that the image is printed on a plastic sheet. Park illustrates that decorative layer 620 is bonded to flexible plastic layer 610.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Park (US 20030196248).

As to claim 8, Park discloses the device above having a first decorative layer and a first layer of flexible plastic to allow for an aesthetically pleasing top surface of the bill. Park does not disclose a second decorative layer and flexible plastic layer along the bottom of said hat. It would have been obvious to one of ordinary skill in the art to add a second decorative layer and second layer of plastic along the bottom to have an aesthetically pleasing layer along the bottom as along the top.

As to claim 9, Park discloses (Paragraph 9) that the image is printed on a plastic sheet. Park illustrates that decorative layer 620 is bonded to flexible plastic layer 610. As stated above, it would have been obvious to one of ordinary skill in the art to modify the top layer of Park and add it to the underside of the cap to provide for a decorative underside.

As to claim 10, the layers placed on the bottom would be the same as the top.

As to claim 11, Park discloses that hats are typically constructed with a bill insert and a layer of fabric around them, which would be used as a decorative layer (Paragraph 4).

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (US 20030196248) in view of Wakefield (US 5,832,537). As to claims 4-5

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**Park disclose the device substantially above. Park does not disclose the use of fabric on the bottom of the bill. Wakefield illustrates (Fig. 2) a cross section of the bill including a fabric layer 8 along the bottom (Col. 2 lines 6-13). It would have been obvious to one of ordinary skill in the art to cover the bottom of the bill with fabric as it provides a more aesthetically pleasing surface. Wakefield discloses that suitable materials include polyester and nylon, which would inherently be a flexible layer along the bottom.**

**As to claim 6, Wakefield discloses the use of fabric as a decorative layer for the bottom of the bill. As state above it would have been obvious to add another decorative layer with a layer of plastic along the bottom to provide for an aesthetically pleasing underside of the hat. As discloses it is common in the art to use fabric as a decorative layer. It would have been obvious to combine the teachings of Park and Wakefield to provide for an aesthetically pleasing underside of the hat.**

**Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (US 20030196248) in view of Coffey (US 3,725,119). Park discloses the device above having a first decorative layer and a first layer of flexible plastic to allow for an aesthetically pleasing top surface of the bill. Park does not disclose the use of "glitter" as a method of decoration. Coffey teaches the use of highly reflective metallic particals dispersed in a vehicle for use in decoration. It would have been obvious to combine the teachings of Park and Coffey as to provide a more decorative surface.**

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Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (US 20030196248) in view of Wang (US 20040006807). Park discloses the device substantially above. Park does not disclose the use of the metallic strip along the edge of the bill with a layer of plastic over it. Wang illustrates a bill 12 made of a metallic material, which would have produced a metallic strip along the edge. There is a see through layer 11 made of a transparent plastic material on top. It would have been obvious to combine the teachings of Wang and Park to allow for a more aesthetically pleasing bill. As stated above, plastic is inherently capable of having a glossy surface.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Libshutz (US 2,450,148) discloses a hat with a bill having a glossy appearance. Park (US 6,766,538), Connelly (US 5,410,761), and Minton (US 5,177,810) teach devices similar in nature to that of the applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew W. Sutton whose telephone number is (571) 272-6093. The examiner can normally be reached on Monday - Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AWS  
15 July 2005



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